

Paper No. 26 Exhibit 4

Obfuscation, distortion, confusion is the hallmark of this BPAI panel. For what reason? Arbitrarily chosen, take the first full paragraph of page 18 of Paper No. 26 verbatim and then examine it with and without BPAI's seeming confirming and fortifying references, shown in bold printed.

Contrary to appellant's contentions in the Request (e.g., page 39, fourth full paragraph, page 43, penultimate paragraph, page 50, second full set of paragraphs, page 52, first paragraph, to page 53, first paragraph, and page 54, first full paragraph; also see above note 7), it is clear from the record that the "Technology" encompassed embodiments of the claimed process of preparing a dialkyl peroxide encompassed by claim 1 (see, e.g., original decision, pages 9-12); that embodiments of the claimed process in the context of the "Technology" using the process parameters specified in claim 1 were disclosed to Celanese in the disclosure and report documents discussed above, pursuant to the Celanese Confidence Agreement, the Celanese Heads of Agreement and the Celanese Definitive Agreement (see above pp. 7-11; see also original opinion, e.g., pages 14-17 and page 41, first full paragraph); and that Celanese issued the "Redox II Design and Economics Update" (Kollar Declaration ~~Exhibit~~ 4) reporting on a method of preparing ethylene glycol according to the "Technology" that included an embodiment of the claimed process (see above pp. 16-17; see also original decision, page 17). Thus, it is clear from the record that the "Technology" encompassing embodiments of the claimed process of preparing a dialkyl peroxide encompassed by claim 1 was at least part of the subject of the transaction between Redox and Celanese with respect to the Celanese Definitive Agreement, even though the disclosure and report documents were not a part of this Agreement or prior, superceded Agreements, and a process encompassed by claim 1 independent of the "Technology" was not involved. See *Scaltech Inc. v. Retec/Tetra, L.L.C.*, 178 F.3d 1378, 1383, 51 USPQ2d 1055, 1058-59 (Fed. Cir. 1999); *RCA Corp. v. Data General Corp.*, 887 F.2d 1056, 1059-62, 12 USPQ2d 1449, 1452-54 (Fed. Cir. 1989).

For the record, THERE IS NOT A SINGLE ITEM THAT APPELLANT HAS CONTENTENDED TO THE CONTRARY. FACTUALLY, APPELLANT HAS FURNISHED EACH OF THESE DOCUMENTS WHICH EXPRESS IN PLAIN AND DIRECT LANGUAGE THE DIALKYL PEROXIDE (DtBP) IN A PRECISE CONTEXT IN EVERY INSTANCE.

No this BPAI panel is not making some new revelation, it must only be seeking to create that impression for subsequent legal proceedings. None of the BPAI cited references supports BPAI assertion.

For the record we will dissect and analyze each BPAI statement and each BPAI reference cited.

BPAI STATEMENT

"Contrary to appellant's contentions in the Request ... it is clear from the record that the "Technology" encompassed embodiments of the claimed process of preparing a dialkyl peroxide encompassed by claim 1"

Appellant's Response

Appellant never made such a contention.

Scrutinize the BPAI's supporting evidence.

From Request page 39, fourth full paragraph,

No disagreement here. Page 2 of the Agreement confirms the above.

Above is about the physical presence of dialkyl peroxide information.

From Request page 43, penultimate paragraph,

This is about Celanese potential rights to use. Celanese had potential rights to use DtBP only as part of the Technology [Field] but Celanese did not have potential rights to use it independent of the Technology [Field].

From Request page 50, second full set of paragraphs,

Same basis as directly above.

From Request page 52, first paragraph, to page 53, first paragraph, and

This is about "experimentation" on DtBP and its relevance in the development of the Technology [Field].

From Request page 54, first full paragraph;

Again the context of DtBP in relationship to the development and to Celanese potential rights to use. Same as in 3rd and 4th above.

From BPAI On Brief Paper No. 26 note 7,

BPAI states, " Because the focus of this appeal is the claimed process encompassed by claim 1, we have not considered appellant's testimonial and documentary evidence which is based on the four cited patents which are drawn to processes for producing ethylene glycol with organic peroxides, the latter not encompassed by claim 1 (Request, e.g., pages 17-18, 22 and 45), or "documents in the file of United States Patent No. 5,321,157" (original decision, page 7 and note 14; Request, page 38).

Appellant's Response

This has nothing to do with the assertions made.

However reference constitutes one proof that BPAI is not adhering to their legal obligation. BPAI arbitrarily chooses to ignore four patents in the Technology [Field] which are evidence of "experimentation" and are essential "in the normal context of its [commodity chemical] technological development" *General Motors Corp. v. Bendix Aviation Corp.*, 123 F. Supp. 506, 521, 102 USPQ 58, 69 (N.D.Ind. 1954). Thereby BPAI by lack of understanding

and misinterpretation chose to employ "selective and partial application of the law" and fail to apply the "complete standards" of the U.S. Supreme Court in *Pfaff v. Wells Elect., Inc.*, 525 U.S. 55, 67, 48, and US Court of Appeals for the Federal Circuit, in *STX v. Brine and Warrior* 48 USPQ2d 1641, 1647 (1998) and the USPTO guidelines in MPEP 2133.03(e) (4) on the "experiment" issue.

From original decision, Paper No. 24, pages 9-12

This is a lot of obfuscative and repetitious dialogue taken from various appellants documents which has no relevance to the above BPAI statement of "Contrary to appellant's contentions in the Request... .."

BPAI STATEMENT

"Contrary to appellant's contentions in the Request that embodiments of the claimed process in the context of the "Technology" using the process parameters specified in claim 1 were disclosed to Celanese in the disclosure and report documents discussed above, pursuant to the Celanese Confidence Agreement, the Celanese Heads of Agreement and the Celanese Definitive Agreement"

Appellant's Response

Appellant never made such a contention.

Scrutinize the BPAI's supporting evidence.

From BPAI On Brief Paper No. 26 pp. 7-11

These pages deal primarily with the issue of "experimental", which BPAI misunderstands and misapplies completely. See pages 11 through top half of 14 of this Paper No. 27

From original decision, Paper No. 24, pages 14-17 and 41 first full paragraph
BPAI uses four full pages dealing with issues of control and suggesting the invention was complete and ready for patenting.

See in this Paper No. 27 pages mid 14 through 16.

BPAI's deficient knowledge in this area is evinced from this panels CV.
BPAI fails to apply the complete mandates of the law "in the normal context of its [commodity chemical] technological development" *General Motors Corp. v. Bendix Aviation Corp.*, 123 F. Supp. 506, 521, 102 USPQ 58, 69 (N.D.Ind. 1954) by lack of understanding and misinterpretation, BPAI employs "selective and partial application of the law" and fail to apply the "complete standards" of the U.S. Supreme Court in *Pfaff v. Wells Elect., Inc.*, 525 U.S. 55, 67, 48, and US Court of Appeals for the Federal Circuit, in *STX v. Brine and Warrior* 48 USPQ2d 1641, 1647 (1998) and the USPTO guidelines in MPEP 2133.03(e) (4) on the "experiment" issue.

BPAI fails to use the complete standards of the Courts.

"Second, the invention must be ready for patenting."

- a. From Justice Stevens opinion for the unanimous Supreme Court finding, "The word "invention" must refer to a concept that is

complete, rather than merely one that is "substantially complete." It is true that reduction to practice ordinarily provides the best evidence that an invention is complete." *Pfaff v. Wells Elect. Inc.*, 525 U.S. 55, 67,. Bold underlines are appellants for emphasis.

- b. Actual reduction to practice in the context of an on-sale bar issue usually requires testing under actual working conditions in such a way as to demonstrate the practical utility of an invention for its intended purpose beyond the probability of failure, unless by virtue of the very simplicity of an invention its practical operativeness is clear. *Field v. Knowles*, 183 F.2d 593, 601, 86 USPQ 373, 379 (CCPA 1950); *Steinberg v. Seitz*, 517 F.2d 1359, 1363, 186 USPQ 209, 212 (CCPA 1975). Bold underline added by appellant for emphasis.

There is relevance to issues, negative to BPAI's assertions, but not pertinent to the above BPAI statement of "Contrary to appellant's contentions in the Request... .."

BPAI STATEMENT

"Contrary to appellant's contentions in the Request that Celanese issued the "Redox II Design and Economics Update" (Kollar Declaration Exhibit 4) reporting on a method of preparing ethylene glycol according to the "Technology" that included an embodiment of the claimed process"

Appellant's Response

Appellant never made such a contention.

Scrutinize the BPAI's supporting evidence.

From BPAI On Brief Paper No. 26, pp. 16-17

This is primarily a reassertion of BPAI faulty conclusions based on partial and selective application of the law.

From original decision, Paper No. 24, page 17

Can not even figure what the point is on this page.

BPAI STATEMENT

"Thus, it is clear from the record that the "Technology" encompassing embodiments of the claimed process of preparing a dialkyl peroxide encompassed by claim 1 was at least part of the subject of the transaction between Redox and Celanese with respect to the Celanese Definitive Agreement, even though the disclosure and report documents were not a part of this Agreement or prior, superceded Agreements, and a process encompassed by claim 1 independent of the "Technology" was not involved.

Appellant's Response

Appellant never made a contention to the contrary.